

## **EXHIBIT J**

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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

L.G. PHILIPS LCD CO., LTD,

Plaintiff,

v.

TATUNG COMPANY, TATUNG  
COMPANY OF AMERICA, INC., and  
VIEWSONIC CORPORATION,

Defendant.

No. MS 07-0030-RSM

PLAINTIFF L.G.PHILIPS LCD CO., LTD.'S  
OPPOSITION TO TATUNG'S MOTION FOR  
PROTECTIVE ORDER

**Noted for Hearing**  
March 19, 2007 at 9:00 a.m.

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff LG.Philips LCD Co., Ltd. ("LPL") hereby opposes the Motion for Protective Order filed by Defendants Tatung Company and Tatung Company of America, Inc. (collectively "Tatung") with respect to the third party subpoena served by LPL on Amazon.com, Inc. (See Ex. 1.) LPL requests that the Court exercise its discretion to transfer the instant motion to the United States District Court for the District of Delaware. In the alternative, LPL requests that the Court deny the Motion and allow LPL to proceed with necessary and appropriate third party discovery.

This Motion for Protective Order has not been filed by the party who received the subpoena from LPL. Rather, Tatung, a defendant in the underlying case, in a blatant attempt to interfere with this and other proper subpoenas, has filed this motion in an effort to prevent third parties from producing what LPL knows will be extensive evidence against Tatung of both infringement and inducement to infringe the patents in the underlying suit. Further,

PLAINTIFF L.G.PHILIPS LCD CO., LTD.'S  
OPPOSITION TO TATUNG'S MOTION FOR  
PROTECTIVE ORDER - 1  
- MS 07-0030-RSM

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1 Tatung's efforts are designed to prevent LPL from obtaining necessary third party discovery  
 2 prior to the deadline of March 30, 2007. LPL has filed a motion with the Special Discovery  
 3 Master in the underlying case seeking an order that prevents Tatung from taking such actions  
 4 and also seeking an extension of third party discovery due to Tatung's improper conduct.

#### 5 **I. STATEMENT OF FACTS**

6 This discovery dispute arises out of a patent infringement action pending in the United  
 7 States District Court for the District of Delaware ("Main Case"). LPL is the owner of U.S.  
 8 Patent No. 6,498,718 ("the '718 Patent") and U.S. Patent No. 6,501,641 ("the '641 Patent")  
 9 (collectively, the "Patents-in-Suit"), which relate to mounting systems used in visual display  
 10 products such as liquid crystal display ("LCD") computer monitors, laptop computers, and  
 11 televisions. LPL has asserted patent infringement claims against Tatung and ViewSonic  
 12 Corporation ("ViewSonic") (collectively, the "Defendants"). The Defendants manufacture  
 13 visual display products, which LPL alleges utilize LPL's patented techniques. Among its  
 14 claims, LPL alleges that Defendants have induced other parties, including the party to whom  
 15 the instant Subpoena was served, to infringe LPL's patents.<sup>1</sup>

16 On December 27, 2006, LPL served a third party subpoena on Hewlett-Packard  
 17 Company. On February 13 and 14, 2007, LPL served approximately 23 other third party  
 18 subpoenas ("Subpoenas") on various distributors, retailers, and purchasers of Defendants'  
 19 products in the United States. The Subpoenas were issued based on LPL's understanding that

20 <sup>1</sup> "A person induces infringement under § 271(b) by actively and knowingly aiding and abetting another's direct  
 21 infringement." *C. R. Bard, Inc. v. Advanced Cardiovascular Sys., Inc.*, 911 F.2d 670, 675 (Fed. Cir. 1990). If  
 22 the defendant has knowledge of the patent, then upon a showing that defendant "had intent to induce the specific  
 23 acts constituting infringement, intent additionally to cause an infringement can be presumed." *MEMC Elec.  
 Materials, Inc. v. Mitsubishi Materials Silicon Corp.*, 420 F.3d 1369, 1379 (Fed. Cir. 2005). A jury could  
 conclude that e-mails between a foreign defendant and a U.S. company "represent product support" showing  
 that the defendant was aware of potentially infringing activities in the U.S. by the U.S. company and that the  
 defendant "intended to encourage those activities." *Id.* at 1379-80. See also *Minnesota Mining & Mfg. Co. v.  
 Chemque, Inc.*, 303 F.3d 1294, 1305 (Fed. Cir. 2002) (evidence did not support finding of no inducement where  
 defendant was aware of patents and supplied infringing products to customers "with instructions on how they  
 were to be used, which, when followed, would lead to infringement"); *Crystal Semiconductor Corp. v. Tritech  
 Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1351 (Fed. Cir. 2001) (defendant's acts in connection with selling  
 infringing audio chips, manufactured in Singapore and sold to customer that resold to the U.S. PC market,  
 constituted active inducement).

1 these parties, who have current or former business relationships with Tatung and ViewSonic,  
2 have documents that are relevant to the instant action, including but not limited to, documents  
3 related to purchase and sale of the infringing products in the United States, documents relating  
4 to Defendants' efforts to market the infringing products in the United States, and other  
5 important discovery concerning infringement, inducement, damages, and other issues.<sup>2</sup> While  
6 a small handful of these third parties were served with subpoenas during the jurisdictional  
7 phase of this case, the new subpoenas are broader in several respects. First, the jurisdictional  
8 subpoenas did not seek documents related to ViewSonic, which are sought in the present  
9 Subpoenas. Second, the jurisdictional subpoenas were limited in most of their categories to  
10 sales of products in Delaware, rather than throughout the United States. In addition, the  
11 Subpoenas include three categories that did not appear at all in the jurisdictional subpoenas.  
12 See Ex. 1, paragraphs 1, 2, and 8 in Attachment B. Moreover, and perhaps most importantly,  
13 some of the parties that received both subpoenas produced very few, if any, documents in  
14 response to the jurisdictional subpoenas, and likely have additional responsive documents  
15 created since the first subpoena was served.

16 Based on information available to LPL and LPL's belief, the third parties are likely to  
17 have information showing that the Defendants have imported, sold, and used their products in  
18 the United States, activities which infringe upon LPL's U.S. patents and which support LPL's  
19 claims of direct infringement or inducement of infringement. Thus, the third parties are likely  
20 to have documents pertaining to communications, business coordination efforts, contracts or  
21 other agreements between itself and the Defendants pertaining to Defendants' products and  
22 sales of those products in the United States. The employees of the third parties are likely to  
23 have knowledge of the manner in which the third party conducted business with the  
24 Defendants and their customers in the United States. The employees of the third parties are

<sup>2</sup> LPL has also sought the same information and documents, unsuccessfully, from the Defendants. Defendants have produced some - but certainly not all - discovery that LPL seeks. Notably, much of Defendants' production is subject to objections and limitations that LPL disputes and which are the subject of related discovery motions already pending before the Special Discovery Master in the Main Case in the District of Delaware, as described more fully below.

1 also likely to have knowledge of the methods and practices and any coordination efforts  
2 related to the third parties' acquisition of infringing LCD components from the Defendants.  
3 All of this information will assist LPL in evaluating its patent infringement and inducement  
4 claims against the Defendants and will enable LPL to verify whether the Defendants' own  
5 document productions and deposition testimony have been complete and accurate. *See*  
6 *generally MEMC Elec. Materials, Inc., v. Mitsubishi Materials Silicon Corp.*, 420 F.3d 1369,  
7 1379-80 (Fed. Cir. 2005) (discussing factors evidencing inducement to infringe on patents).

8 In addition, the Subpoenas requested that all documents be produced by March 5,  
9 2007, and that depositions occur between March 12 and March 27, 2007, consistent with the  
10 March 30 deadline for third party discovery in this case. LPL provided notice and copies of  
11 the Subpoenas to the Defendants prior to the service of the Subpoenas. During a telephone  
12 conference on January 30, 2007, Tatung indicated for the first time that it intended to file a  
13 motion for protective order with respect to the Subpoena directed to Hewlett-Packard, but  
14 Tatung never did so.<sup>3</sup> More than one month later, on March 5, Tatung again threatened to file  
15 additional motions for protective orders with respect to the later served 23 Subpoenas. In  
16 addition, even though Tatung had received the second batch of Subpoenas nearly three weeks  
17 earlier, Tatung indicated that some or all of such motions would be made on an *ex parte* basis  
18 because of the upcoming return dates on the Subpoenas, which incidentally was that same  
19 day. (*See Ex. 2, Emails between V. Ho and C. Connor (Mar. 5-7, 2007).*) Tatung claimed to  
20 have standing to raise any such objections on behalf of the third parties because it claimed  
21 that the Subpoenas pertained to Tatung's still unresolved objections to the scope of discovery  
22 in the Main Case. Tatung never explained why it had waited several weeks before raising its  
23

<sup>3</sup> To date, Hewlett-Packard has produced more than 5000 pages of relevant, responsive documents. Hewlett-Packard's agreement to produce and subsequent production belies Tatung's argument that the Subpoenas are burdensome to the third parties, particularly because the majority of the third parties are smaller entities with far fewer responsive documents. Moreover, Hewlett-Packard produced many "Process Management Plans," documents that LPL asserts are essential to its infringement claims. Incredibly, Tatung denied the existence of such documents and refused to produce them in response to numerous requests from LPL. Tatung's failure to produce these documents underscores how critical it is for LPL to obtain the discovery that is being sought from the third parties.

1 objections, but merely stated that it intended to file its motions on an *ex parte* basis. *See id.*  
2 In an exchange of emails, LPL strenuously objected to Tatung's position that it could file *ex*  
3 *parte* motions on any issue in the case, including any issues related to the third party  
4 subpoenas served by LPL. *See id.* In addition, LPL further reiterated its position that Tatung  
5 had no standing to raise objections to the Subpoenas, principally, because Tatung has never  
6 proved why any documents now in the custody of third parties are confidential, trade secrets,  
or otherwise shielded from discovery. *See id.*

7 Nonetheless, Tatung filed the instant Motion, along with approximately 22 other  
8 Motions related to the various Subpoenas served by LPL. Tatung filed the Motions for  
9 Protective Order without regard for the fact that several of the third parties had either already  
10 produced the requested documents or agreed to produce the requested documents with  
11 objection. Indeed, several third parties have agreed to produce the requested documents even  
12 after learning that Tatung had filed Motions related to the Subpoenas, which further  
13 undermines Tatung's arguments in its Motion. Nonetheless, due to Tatung's interference and  
14 improper motions, there are also certain third parties who have now refused to produce the  
15 requested discovery after they had already agreed to comply with the subpoenas. *See, e.g.* Ex.  
3.

## 16 II. ARGUMENT

17 Under Rule 26(c), Tatung bears the burden of establishing that a protective order  
18 should be granted. *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986). To  
19 meet its burden, "the party seeking the protective order must show good cause by  
20 demonstrating a particular need for protection. Broad allegations of harm, unsubstantiated by  
21 specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *See id.; United*  
22 *States v. Garrett*, 571 F.2d 1323, 1326, n. 3 (5th Cir. 1978) (requiring "a particular and  
23 specific demonstration of fact as distinguished from stereotyped and conclusory statements");  
*General Dynamics Corp. v. Selb Mfg. Corp.*, 481 F.2d 1204, 1212 (8th Cir. 1973), cert.  
denied, 414 U.S. 1162, 94 S.Ct. 926, 39 L.Ed.2d 116 (1974); 8 C. Wright & A. Miller,



1 Federal Practice and Procedure § 2035 (1970 & Supp.1985). Moreover, it is clear that the  
 2 harm described by the movant must be significant, not a mere trifle. *See, e.g., Joy v. North*,  
 3 692 F.2d 880, 894 (2d Cir.1982) (refusing protective order where proponent's only argument  
 4 in its favor was the broad allegations that the disclosure of certain information would "injure  
 5 the bank in the industry and local community"), cert. denied sub nom. *Citytrust v. Joy*, 460  
 6 U.S. 1051, 103 S.Ct. 1498, 75 L.Ed.2d 930 (1983). Tatung has failed to meet its high burden  
 with respect to this Motion.

7 A. **The Court Should Exercise Its Discretion to Transfer Tatung's Motion to**  
 8 **the District of Delaware**

9 The Court has the authority to transfer Defendants' Motion for Protective Order to the  
 10 District of Delaware. *See Devlin v. Transportation Communications International Union*,  
 11 2000 WL 249286, \*1 (S.D.N.Y. 2000) (stating that there is ample authority for the court from  
 12 which a subpoena issues to transfer any motions relating to that subpoena back to the court  
 13 where the main case is pending); *Digital Equipment Corp.*, 949 F.2d 228, 231 (8th Cir. 1991)  
 14 (holding that while the court initially has exclusive jurisdiction to rule on the objections, it  
 may in its discretion remit the matter to the court in which the action is pending).<sup>4</sup>

15 As explained above, all 23 motions filed by LPL are nearly identical. Yet, by having  
 16 the Motions heard in 15 or more different jurisdictions, the parties risk that inconsistent  
 17 opinions will be rendered. Moreover, the hearings on all of these motions will be very time  
 18 consuming and will further interfere with LPL's attempts to finalize discovery in the Main  
 19 Case, in which depositions of Tatung's witnesses are currently being taken. In light of these  
 20 issues, and the other related discovery issues currently pending in the Main Case as described  
 21 below, a decision in this Court would have to be made in a vacuum, without the benefit of  
 22 entering a global decision related to all 23 nearly identical motions. Indeed, this Court should  
 not attempt to decide these issues in a vacuum without the benefit of knowing the history of

23 <sup>4</sup> See also Fed.R.Civ.P. 26(c), advisory committee's note. The Advisory Committee's Note to Rule 26(c)  
 (Protective Orders) explains: The subdivision recognizes the power of the court in the district where a deposition  
 is being taken to make protective orders. The court in the district where the deposition is being taken may, and  
 frequently will, remit the deponent or party to the court where the action is pending.

1 complex discovery disputes and facts at issue between the parties in the Main case. Thus, for  
 2 the reasons cited above, LPL requests that the Court formally transfer this dispute back to the  
 3 District of Delaware, the court where the Main Case is pending, so that all 23 motions and  
 4 oppositions can be heard en masse.

5 **B. Tatung Lacks Standing to Challenge the Subpoenas**

6 Tatung does not have standing to raise any objections to LPL's Rule 45 subpoenas.  
 7 Rule 45(c) provides protection to persons "subject to subpoenas." Indeed, "[u]nless a party to  
 8 an action can make claim to some personal right or privilege in respect to the subject matter of  
 9 a subpoena duces tecum directed to a nonparty witness, the party to the action has no right to  
 10 relief under Rule 45(b) or 30(b)." *Dart Industries, Inc. v. Liquid Nitrogen Processing*, 50  
 11 F.R.D. 286, 291 (D. Del. 1970); *see Ponsford v. United States*, 771 F.2d 1305, 1308 (9th Cir.  
 12 1985) (denying motion to quash for lack of standing); *Nova Products, Inc. v. Kisma Video,*  
 13 *Inc.*, 220 F.R.D. 238, 241 (S.D.N.Y. 2004) (denying motion to quash because no showing of  
 14 personal right or privilege); *Oliver B. Cannon and Son, Inc. v. Fidelity and Cas. Co. of New*  
 15 *York*, 519 F. Supp. 668, 680 (D. Del. 1981) (denying motion to quash because movant failed  
 16 to prove documents sought were privileged). Tatung attempts to distinguish the *Dart* decision  
 17 on two grounds. First, Tatung argues that the motion in *Dart* was premised on Rule 45(c),  
 18 rather than Rule 26(c), which was relied upon by Tatung. However, the standards for  
 19 protective orders under both rules are the same. *See* Advisory Committee Notes to the 1970  
 20 Amendment to Rule 45 (the "scope of discovery through a subpoena is the same as that  
 21 applicable to Rule 34 and other discovery rules.") Thus, Rule 45 clearly incorporates the  
 22 standards set forth in Rule 26.

23 Tatung also attempts to distinguish *Dart* on the ground that the moving party in *Dart*  
 did not assert any personal privilege in the requested documents. Similarly however, in this  
 case, while Tatung has stated, in a conclusory manner, that it has a personal stake in the  
 documents to be produced, Tatung has failed to provide any particularized facts or evidence to  
 support its conclusions. Such statements are insufficient for Tatung to meet its burden in



1 establishing that it is entitled to a Protective Order. *Cipollone*, 785 F.2d at 1121. Namely,  
2 Tatung has failed to explain why it would be burdensome to Tatung for a third party to  
3 produce the requested information. In addition, while Tatung argues that its alleged  
4 confidential documents are stored in a secure facility, Tatung fails to explain how it can assert  
5 the alleged confidentiality of such information that it has voluntarily disclosed to its  
6 customers, particularly where Tatung evidently has no confidentiality agreement in place to  
7 protect the information. In addition, Tatung fails to explain why the Protective Order entered  
8 in the Main Case, which governs the use and disclosure of confidential information, does not  
9 adequately protect the information to be produced by the third parties. Indeed, by Tatung's  
10 own admission, it has already produced documents designated as "Highly Sensitive  
11 Confidential" in the Main Case under the Protective Order. Yet, Tatung's arguments suggest  
12 that such a course of action is not good enough for the third parties, even though the  
13 Protective Order clearly applies to non-parties as well. Ex. 4. Tatung's argument that LPL  
14 seeks such information "to obtain a competitive advantage over them" is unfounded,  
15 inappropriate, and frankly, would not even be possible since documents marked "Highly  
16 Sensitive Confidential" cannot even be disclosed to LPL and can only be seen by outside  
17 counsel. See Ex. 4 at ¶ 2.2. LPL strongly disputes Tatung's contention that it has ever  
18 violated a Protective Order in this or any other cases. Moreover, Tatung has no evidence to  
19 support its contention that LPL may be in violation of the patent prosecution bar, and  
20 Tatung's accusations on this point are misplaced and offensive.

21 Here, Tatung has not identified any particular harm that would necessitate a Protective  
22 Order. Moreover, Tatung has no basis to object to the information sought by LPL's  
23 subpoenas and, thus, does not have standing to move for a Protective Order with respect to  
any of LPL's subpoenas. As such, Tatung has evidently filed these motions solely to delay  
and impede LPL's discovery efforts.

1  
2 C. **Tatung's Motion Is Nothing More Than An Attempt to Interfere With**  
3 **LPL's Legitimate Third Party Discovery**

4 Tatung's interference with valid third party discovery is inappropriate and is nothing  
5 more than an attempt to delay the third party discovery until after the March 30, 2007  
6 discovery deadline. Indeed, on March 7, 2007, LPL received a telephone message from  
7 Sensormatic, who had previously agreed to produce the documents requested in the  
8 Subpoena. In that message, Sensormatic stated that Tatung told Sensormatic that it planned to  
9 move for a protective order. Sensormatic further expressed concern about being in the middle  
10 of the dispute between the parties regarding the Subpoena. As a result, Sensormatic has not  
11 produced documents yet despite its earlier agreement to do so. On March 8, 2007, LPL  
12 received correspondence from Tyco Electronics Corp. ("Tyco"), who LPL had also served  
13 with a Subpoena. (See Ex. 3.) Prior to that date, Tyco had also agreed to produce documents  
14 in response to the Subpoena. In the correspondence on March 8, however, Tyco stated that, "I  
15 understand that [Tatung] intends to file a motion for protective order with regard to this  
16 subpoena. In light of this, Tyco will await the disposition of this motion by the court before  
17 providing any material in response to the subpoena." (Id.) These communications clearly  
18 show that Tatung's motions are delaying LPL's legitimate discovery in this action. Because  
19 Tatung waited until now to file motions pertaining to subpoenas served almost one month  
20 ago, it is also clear that Tatung is using its motions as a way to prevent LPL from obtaining  
21 third party discovery prior to the March 30 deadline.

22 Tatung's decision to wait almost one month to file its motions for protective order and  
23 Tatung's disruptive communications with third parties are tactics that Tatung has used before  
in the Main Case and in at least one prior patent infringement case. In the Main Case, during  
the jurisdictional discovery phase, "Tatung failed to appear for depositions on multiple  
occasions, failed to produce witnesses prepared to testify on noticed and relevant topics, and  
failed to respond to interrogatories and requests for production of documents," which forced  
LPL to waste its resources just to prove that Tatung's products are sold in Delaware. (Ex. 5,

1 Report & Recomms. at 9 (Aug. 16, 2005) (imposing sanctions on Tatung).) Ultimately, after  
2 the Special Discovery Master in the Main Case reviewed Tatung's pattern of delay and  
3 discovery abuse, Tatung withdrew its jurisdictional defense. (*See generally id.*)

4 Tatung has also taken steps to disrupt third party discovery in at least one other case.  
5 *See Safer Display Technology, Ltd. v. Tatung Co.*, 227 F.R.D. 435 (E.D. Va. 2004) (copy  
6 attached hereto). In that case, represented by the same counsel as in the Main Case, Tatung  
7 engaged in similar delays before it finally withdrew its jurisdictional defense. *See Safer*  
8 *Display*, 227 F.R.D. at 437. Notably, in *Safer Display*, Tatung worked diligently to impede  
9 third party discovery by contacting and attempting to dissuade third parties from producing  
10 discovery, (*see* Ex. 6 at 9-10), and filing motions for protective orders for which Tatung  
11 lacked standing, (*see id.* at 10-11).

12 As Tatung is aware, all of these emergency hearings have been scheduled to occur  
13 simultaneously with depositions of Tatung's witnesses. Because LPL's lead trial counsel are  
14 busy taking and defending depositions this week, it appears that Tatung strategically filed  
15 these requests for expedited hearing in an attempt to prevent LPL from obtaining significant  
16 and relevant information it needs from the third parties or to divert LPL's focus from the  
17 Tatung depositions. Tatung's continuing pattern of dilatory tactics and improper interference  
18 with LPL's discovery efforts should not be allowed to continue.

19 **D. LPL Has Been Unsuccessful In Obtaining the Discovery It Seeks From the**  
20 **Defendants, Who Have Refused to Produce the Requested Documents**

21 LPL needs the discovery that it seeks from the third parties because the fact discovery  
22 in the Main Case will close on March 30, 2007 and because Tatung has not cooperated with  
23 LPL's discovery efforts. Indeed, Tatung misrepresents the volume and the sufficiency of its  
document production to date. Although LPL's discovery requests were served on November  
29, 2005, Tatung has refused to fully comply with those requests by, among other things,  
imposing unreasonable limitations and conditions on their production. LPL filed motions to  
compel in the Main Case that addressed issues common to all Defendants in the Main Case in

1 September, October, November, and December 2006 and in January, February, and March  
2 2007. Most of these issues have not yet been resolved and many of those unresolved issues  
3 relate directly to Tatung's instant Motion for Protective Order. For instance, although Tatung  
4 has identified over 300 potentially infringing products, it only produced about 60 technical  
5 drawings and then claimed, without explaining their calculations, that this fractional  
6 production covered as much as 96% of their products. Additionally, after telling LPL for  
7 months that it had produced all technical documents, Tatung has only recently revealed, but  
8 not yet fully produced, additional categories of critically relevant technical drawings. Tatung  
9 has informed LPL that it will complete its supplemental production in April, which is well  
after the March 30 deadline for third party discovery.

10 Tatung argues that the third parties should not be required to produce documents, in  
11 part, because Tatung has objected to the scope of LPL's requests. Tatung correctly notes that  
12 the Special Discovery Master in the Main Case has not yet ruled on these issues. This is  
13 precisely the reason that LPL seeks discovery from the third parties. Tatung has refused to  
14 produce relevant documents and the Special Discovery Master has not ruled on Tatung's  
15 objections or on LPL's motions to compel that production. Notably, the subpoena itself is not  
16 limited to documents relating to Tatung in the possession of the third party as the subpoena  
17 also seeks documents relating to ViewSonic, another defendant in the Main case who has not  
18 objected to these subpoenas. All fact discovery, including third party discovery, in the Main  
19 Case closes on March 30, 2007. After that date, LPL will not be able to seek further  
20 discovery from any third party. Thus, in order to compile all relevant evidence and properly  
prepare its case for trial, LPL needs discovery from the third parties so that it can test the  
sufficiency and completeness of Tatung's own production.

21 There have been no rulings in the Main Case that would limit LPL's ability to obtain  
22 the scope of discovery that it seeks from the third parties. Indeed, contrary to Tatung's  
23 statement that the Special Discovery Master's "impending ruling" will be favorable to Tatung,  
neither party can predict in whose favor the Special Discovery Master will rule. Although

1 Tatung resists LPL's discovery in the Main Case, that resistance does not, by itself, erect  
2 roadblocks to LPL's discovery from third parties. LPL properly seeks discovery from Tatung  
3 about all potentially infringing products because only Tatung can provide LPL with  
4 information that would identify infringing products out of Tatung's total of over 850 different  
5 products.

6 **E. The Scope of the Subpoena is Reasonable, And In Any Event, Tatung's**  
**Objections are Misplaced**

7 In its Motion, Tatung argues that any discovery should be limited to the accused  
8 products. This, however, is precisely why LPL issued the Subpoenas. In its Complaint, LPL  
9 identified to Tatung an example of a product that LPL alleged to infringe the Patents-in-Suit.  
10 However, because Tatung makes hundreds of products, most of which are sold under brand  
11 names belonging to third parties, LPL has no way to know, without Tatung's assistance,  
12 which of Tatung's hundreds of products use infringing technology. LPL's attempts to obtain  
13 information regarding Defendants' products has been ongoing since November 2005.  
14 However, the Defendants have objected to producing documents that would enable LPL to  
15 identify those products, and continue to resist LPL's efforts to this day. In fact, during a  
16 hearing on March 12, 2007, Tatung conceded that it has not produced all such documents and  
17 that it would produce additional documents in April 2007, after the deadline for the close of  
18 third party discovery.

19 In light of the Delaware Court's Scheduling Order, requiring that third party discovery  
20 be completed by March 30, Tatung's efforts to limit the scope of LPL's subpoena to products  
21 that have been accused of infringement will artificially narrow the scope of the subpoena to  
22 products that are currently accused, even though that list will likely expand in April, after LPL  
23 finally receives Tatung's supplemental document production.

In addition, Tatung's objections to the scope of the Subpoena are misplaced.  
Specifically, objections based on burden or scope of a Subpoena should be made by the party  
upon whom the Subpoena is served. As the burden will not be borne by Tatung, Tatung does

1 not have standing to raise that issue. To the extent that Tatung believes that the documents  
 2 produced by third parties are not relevant to the litigation, or exceed the bounds of admissible  
 3 evidence, Tatung can raise those arguments in advance of trial. *See Cook v. Rockwell Intern.*  
 4 *Corp.*, 935 F.Supp. 1452, 1465 (D.Colo. 1996) ("Defendants had no standing to object to the  
 5 breadth of the order [with respect to third party subpoena] but were restricted to appropriate  
 6 objections as to relevance and admissibility before trial.") Notably, Tatung filed the Motions  
 7 for Protective Order without regard for the fact that several of the third parties had either  
 8 already produced the requested documents or agreed to produce the requested documents with  
 9 objection. As the party to whom the Subpoena was served has not filed a Motion for  
 10 Protective Order with respect to the breadth of the Subpoena, Tatung's objection on that basis  
 11 should be denied.

### 12 **III. CONCLUSION**

13 For the foregoing reasons, LPL requests that the Court exercise its discretion to transfer the  
 14 instant motion to the United States District Court for the District of Delaware. In the  
 15 alternative, LPL requests that the Court deny the Motion and allow LPL to proceed with  
 16 necessary third party discovery.

17 DATED this 14th day of March 2007.

18 GARDNER BOND TRABOLSI PLLC

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

L.G. PHILIPS LCD CO., LTD.,

Plaintiff,

v.

TATUNG COMPANY; TATUNG  
COMPANY OF AMERICA, INC.; AND  
VIEWSONIC CORPORATION,

Defendants.

CASE NO. 07-CV-0450-H (CAB)

**PLAINTIFF LG.PHILIPS LCD CO., LTD.'S  
OPPOSITION TO TATUNG'S MOTION  
FOR PROTECTIVE ORDER**

Date: None Set  
Time: None Set  
Ctrm. E  
Judge: Cathy Ann Bencivengo

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1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff LG Philips LCD  
2 Co., Ltd. ("LPL") hereby opposes the Motion for Protective Order filed by Defendants Tatung  
3 Company and Tatung Company of America, Inc. (collectively "Tatung") with respect to the third  
4 party subpoena served by LPL on American Dynamics (*See Ex. 1*) LPL requests that the Court  
5 exercise its discretion to transfer the instant motion to the United States District Court for the  
6 District of Delaware. In the alternative, LPL requests that the Court deny the Motion and allow  
7 LPL to proceed with necessary and appropriate third party discovery.

8 This Motion for Protective Order has not been filed by the party who received the  
9 subpoena from LPL. Rather, Tatung, a defendant in the underlying case, in a blatant attempt to  
10 interfere with this and other proper subpoenas, has filed this motion in an effort to prevent third  
11 parties from producing what LPL knows will be extensive evidence against Tatung of both  
12 infringement and inducement to infringe the patents in the underlying suit. Further, Tatung's  
13 efforts are designed to prevent LPL from obtaining necessary third party discovery prior to the  
14 deadline of March 30, 2007. LPL has filed a motion with the Special Discovery Master in the  
15 underlying case seeking an order that prevents Tatung from taking such actions and also seeking  
16 an extension of third party discovery due to Tatung's improper conduct.

17 **I. STATEMENT OF FACTS**

18 This discovery dispute arises out of a patent infringement action pending in the United  
19 States District Court for the District of Delaware ("Main Case"). LPL is the owner of U.S. Patent  
20 No. 6,498,718 ("the '718 Patent") and U.S. Patent No. 6,501,641 ("the '641 Patent")  
21 (collectively, the "Patents-in-Suit"), which relate to mounting systems used in visual display  
22 products such as liquid crystal display ("LCD") computer monitors, laptop computers, and  
23 televisions. LPL has asserted patent infringement claims against Tatung and ViewSonic  
24 Corporation ("ViewSonic") (collectively, the "Defendants"). The Defendants manufacture visual  
25 display products, which LPL alleges utilize LPL's patented techniques. Among its claims, LPL  
26 alleges that Defendants have induced other parties, including the party to whom the instant  
27  
28



1 Subpoena was served, to infringe LPL's patents.<sup>1</sup>

2 On December 27, 2006, LPL served a third party subpoena on Hewlett-Packard Company.  
3 On February 13 and 14, 2007, LPL served approximately 23 other third party subpoenas  
4 ("Subpoenas") on various distributors, retailers, and purchasers of Defendants' products in the  
5 United States. The Subpoenas were issued based on LPL's understanding that these parties, who  
6 have current or former business relationships with Tatung and ViewSonic, have documents that  
7 are relevant to the instant action, including but not limited to, documents related to purchase and  
8 sale of the infringing products in the United States, documents relating to Defendants' efforts to  
9 market the infringing products in the United States, and other important discovery concerning  
10 infringement, inducement, damages, and other issues.<sup>2</sup> While a small handful of these third  
11 parties were served with subpoenas during the jurisdictional phase of this case, the new  
12 subpoenas are broader in several respects. First, the jurisdictional subpoenas did not seek  
13 documents related to ViewSonic, which are sought in the present Subpoenas. Second, the  
14 jurisdictional subpoenas were limited in most of their categories to sales of products in Delaware,  
15 rather than throughout the United States. In addition, the Subpoenas include three categories that  
16 did not appear at all in the jurisdictional subpoenas. See Ex. 1, paragraphs 1, 2, and 8 in

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17 <sup>1</sup> "A person induces infringement under § 271(b) by actively and knowingly aiding and abetting  
18 another's direct infringement." *C. R. Bard, Inc. v. Advanced Cardiovascular Sys., Inc.*, 911 F.2d  
19 670, 675 (Fed. Cir. 1990). If the defendant has knowledge of the patent, then upon a showing that  
20 defendant "had intent to induce the specific acts constituting infringement, intent additionally to  
21 cause an infringement can be presumed." *MEMC Elec. Materials, Inc. v. Mitsubishi Materials  
22 Silicon Corp.*, 420 F.3d 1369, 1379 (Fed. Cir. 2005). A jury could conclude that e-mails between  
23 a foreign defendant and a U.S. company "represent product support" showing that the defendant  
24 was aware of potentially infringing activities in the U.S. by the U.S. company and that the  
25 defendant "intended to encourage those activities." *Id.* at 1379-80. See also *Minnesota Mining &  
26 Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1305 (Fed. Cir. 2002) (evidence did not support  
27 finding of no inducement where defendant was aware of patents and supplied infringing products  
28 to customers "with instructions on how they were to be used, which, when followed, would lead  
to infringement."); *Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l, Inc.*, 246 F.3d  
1336, 1351 (Fed. Cir. 2001) (defendant's acts in connection with selling infringing audio chips,  
manufactured in Singapore and sold to customer that resold to the U.S. PC market, constituted  
active inducement).

<sup>2</sup> LPL has also sought the same information and documents, unsuccessfully, from the Defendants.  
Defendants have produced some - but certainly not all - discovery that LPL seeks. Notably,  
much of Defendants' production is subject to objections and limitations that LPL disputes and  
which are the subject of related discovery motions already pending before the Special Discovery  
Master in the Main Case in the District of Delaware, as described more fully below.

1 Attachment B. Moreover, and perhaps most importantly, some of the parties that received both  
2 subpoenas produced very few, if any, documents in response to the jurisdictional subpoenas, and  
3 likely have additional responsive documents created since the first subpoena was served.

4 Based on information available to LPL and LPL's belief, the third parties are likely to  
5 have information showing that the Defendants have imported, sold, and used their products in the  
6 United States, activities which infringe upon LPL's U.S. patents and which support LPL's claims  
7 of direct infringement or inducement of infringement. Thus, the third parties are likely to have  
8 documents pertaining to communications, business coordination efforts, contracts or other  
9 agreements between itself and the Defendants pertaining to Defendants' products and sales of  
10 those products in the United States. The employees of the third parties are likely to have  
11 knowledge of the manner in which the third party conducted business with the Defendants and  
12 their customers in the United States. The employees of the third parties are also likely to have  
13 knowledge of the methods and practices and any coordination efforts related to the third parties'  
14 acquisition of infringing LCD components from the Defendants. All of this information will  
15 assist LPL in evaluating its patent infringement and inducement claims against the Defendants  
16 and will enable LPL to verify whether the Defendants' own document productions and deposition  
17 testimony have been complete and accurate. *See generally MEMC Elec. Materials, Inc. v.*  
18 *Mitsubishi Materials Silicon Corp.*, 420 F.3d 1369, 1379-80 (Fed. Cir. 2005) (discussing factors  
19 evidencing inducement to infringe on patents).

20 In addition, the Subpoenas requested that all documents be produced by March 5, 2007,  
21 and that depositions occur between March 12 and March 27, 2007, consistent with the March 30  
22 deadline for third party discovery in this case. LPL provided notice and copies of the Subpoenas  
23 to the Defendants prior to the service of the Subpoenas. During a telephone conference on  
24 January 30, 2007, Tatung indicated for the first time that it intended to file a motion for protective  
25 order with respect to the Subpoena directed to Hewlett-Packard, but Tatung never did so.<sup>3</sup> More

26  
27 <sup>3</sup> To date, Hewlett-Packard has produced more than 5000 pages of relevant, responsive  
28 documents. Hewlett-Packard's agreement to produce and subsequent production belies Tatung's  
argument that the Subpoenas are burdensome to the third parties, particularly because the  
majority of the third parties are smaller entities with far fewer responsive documents. Moreover,

1 than one month later, on March 5, Tatung again threatened to file additional motions for  
2 protective orders with respect to the later served 23 Subpoenas. In addition, even though Tatung  
3 had received the second batch of Subpoenas nearly three weeks earlier, Tatung indicated that  
4 some or all of such motions would be made on an *ex parte* basis because of the upcoming return  
5 dates on the Subpoenas, which incidentally was that same day. (*See Ex. 2, Emails between V. Ho*  
6 *and C. Connor (Mar. 5-7, 2007).*) Tatung claimed to have standing to raise any such objections  
7 on behalf of the third parties because it claimed that the Subpoenas pertained to Tatung's still  
8 unresolved objections to the scope of discovery in the Main Case. Tatung never explained why it  
9 had waited several weeks before raising its objections, but merely stated that it intended to file its  
10 motions on an *ex parte* basis. *See id.* In an exchange of emails, LPL strenuously objected to  
11 Tatung's position that it could file *ex parte* motions on any issue in the case, including any issues  
12 related to the third party subpoenas served by LPL. *See id.* In addition, LPL further reiterated its  
13 position that Tatung had no standing to raise objections to the Subpoenas, principally, because  
14 Tatung has never proved why any documents now in the custody of third parties are confidential,  
15 trade secrets, or otherwise shielded from discovery. *See id.*

16 Nonetheless, Tatung filed the instant Motion, along with approximately 22 other Motions  
17 related to the various Subpoenas served by LPL. Tatung filed the Motions for Protective Order  
18 without regard for the fact that several of the third parties had either already produced the  
19 requested documents or agreed to produce the requested documents with objection. Indeed,  
20 several third parties have agreed to produce the requested documents even after learning that  
21 Tatung had filed Motions related to the Subpoenas, which further undermines Tatung's arguments  
22 in its Motion. Nonetheless, due to Tatung's interference and improper motions, there are also  
23 certain third parties who have now refused to produce the requested discovery after they had  
24 already agreed to comply with the subpoenas. *See, e.g. Ex. 3.*

25  
26 Hewlett-Packard produced many "Process Management Plans," documents that LPL asserts are  
27 essential to its infringement claims. Incredibly, Tatung denied the existence of such documents  
28 and refused to produce them in response to numerous requests from LPL. Tatung's failure to  
produce these documents underscores how critical it is for LPL to obtain the discovery that is  
being sought from the third parties.

1 **II. ARGUMENT**

2 Under Rule 26(c), Tatung bears the burden of establishing that a protective order should  
 3 be granted. *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986). To meet its  
 4 burden, “the party seeking the protective order must show good cause by demonstrating a  
 5 particular need for protection. Broad allegations of harm, unsubstantiated by specific examples or  
 6 articulated reasoning, do not satisfy the Rule 26(c) test.” *See id.*; *United States v. Garrett*, 571  
 7 F.2d 1323, 1326, n. 3 (5th Cir. 1978) (requiring “a particular and specific demonstration of fact as  
 8 distinguished from stereotyped and conclusory statements”); *General Dynamics Corp. v. Selb*  
 9 *Mfg. Corp.*, 481 F.2d 1204, 1212 (8th Cir. 1973), cert. denied, 414 U.S. 1162, 94 S.Ct. 926, 39  
 10 L.Ed.2d 116 (1974); 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2035 (1970 &  
 11 Supp. 1985). Moreover, it is clear that the harm described by the movant must be significant, not a  
 12 mere trifle. *See, e.g., Joy v. North*, 692 F.2d 880, 894 (2d Cir. 1982) (refusing protective order  
 13 where proponent’s only argument in its favor was the broad allegations that the disclosure of  
 14 certain information would “injure the bank in the industry and local community”), cert. denied  
 15 sub nom. *Citytrust v. Joy*, 460 U.S. 1051, 103 S.Ct. 1498, 75 L.Ed.2d 930 (1983). Tatung has  
 16 failed to meet its high burden with respect to this Motion.

17 **A. The Court Should Exercise Its Discretion to Transfer Tatung’s Motion to the**  
 18 **District of Delaware**

19 The Court has the authority to transfer Defendants’ Motion for Protective Order to the  
 20 District of Delaware. *See Devlin v. Transportation Communications International Union*, 2000  
 21 WL 249286, \*1 (S.D.N.Y. 2000) (stating that there is ample authority for the court from which a  
 22 subpoena issues to transfer any motions relating to that subpoena back to the court where the  
 23 main case is pending); *In re Digital Equipment Corp.*, 949 F.2d 228, 231 (8th Cir. 1991) (holding  
 24 that while the court initially has exclusive jurisdiction to rule on the objections, it may in its  
 25 discretion remit the matter to the court in which the action is pending).<sup>4</sup>

26 \_\_\_\_\_  
 27 <sup>4</sup> *See also* Fed.R.Civ.P. § 26(c), advisory committee’s note. The Advisory Committee’s Note to  
 28 Rule 26(c) (Protective Orders) explains: The subdivision recognizes the power of the court in the  
 district where a deposition is being taken to make protective orders. The court in the district

1 As explained above, all 23 motions filed by LPL are nearly identical. Yet, by having the  
2 Motions heard in 15 or more different jurisdictions, the parties risk that inconsistent opinions will  
3 be rendered. Moreover, the hearings on all of these motions will be very time consuming and will  
4 further interfere with LPL's attempts to finalize discovery in the Main Case, in which depositions  
5 of Tatung's witnesses are currently being taken. In light of these issues, and the other related  
6 discovery issues currently pending in the Main Case as described below, a decision in this Court  
7 would have to be made in a vacuum, without the benefit of entering a global decision related to  
8 all 23 nearly identical motions. Indeed, this Court should not attempt to decide these issues in a  
9 vacuum without the benefit of knowing the history of complex discovery disputes and facts at  
10 issue between the parties in the Main case. Thus, for the reasons cited above, LPL requests that  
11 the Court formally transfer this dispute back to the District of Delaware, the court where the Main  
12 Case is pending, so that all 23 motions and oppositions can be heard en masse.

13 **B. Tatung Lacks Standing to Challenge the Subpoenas**

14 Tatung does not have standing to raise any objections to LPL's Rule 45 subpoenas.  
15 Rule 45(c) provides protection to persons "subject to subpoenas." Indeed, "[u]nless a party to an  
16 action can make claim to some personal right or privilege in respect to the subject matter of a  
17 subpoena duces tecum directed to a nonparty witness, the party to the action has no right to relief  
18 under Rule 45(b) or 30(b)." *Dart Industries, Inc v Liquid Nitrogen Processing*, 50 F.R.D. 286,  
19 291 (D. Del. 1970); *see Ponsford v. United States*, 771 F.2d 1305, 1308 (9th Cir. 1985) (denying  
20 motion to quash for lack of standing); *Nova Products, Inc v Kisma Video, Inc.*, 220 F.R.D. 238,  
21 241 (S.D.N.Y. 2004) (denying motion to quash because no showing of personal right or  
22 privilege); *Oliver B. Cannon and Son, Inc. v. Fidelity and Cas Co. of New York*, 519 F. Supp.  
23 668, 680 (D. Del. 1981) (denying motion to quash because movant failed to prove documents  
24 sought were privileged). Tatung attempts to distinguish the *Dart* decision on two grounds. First,  
25 Tatung argues that the motion in *Dart* was premised on Rule 45(c), rather than Rule 26(c), which  
26 was relied upon by Tatung. However, the standards for protective orders under both rules is the  
27  
28 where the deposition is being taken may, and frequently will, remit the deponent or party to the  
court where the action is pending.



1 same. *See* Advisory Committee Notes to the 1970 Amendment to Rule 45 (the “scope of  
2 discovery through a subpoena is the same as that applicable to Rule 34 and other discovery  
3 rules”) Thus, Rule 45 clearly incorporates the standards set forth in Rule 26.

4 Tatung also attempts to distinguish *Dart* on the ground that the moving party in *Dart* did  
5 not assert any personal privilege in the requested documents. Similarly however, in this case,  
6 while Tatung has stated, in a conclusory manner, that it has a personal stake in the documents to  
7 be produced, Tatung has failed to provide any particularized facts or evidence to support its  
8 conclusions. Such statements are insufficient for Tatung to meet its burden in establishing that it  
9 is entitled to a Protective Order. *Cipollone*, 785 F.2d at 1121. Namely, Tatung has failed to  
10 explain why it would be burdensome to Tatung for a third party to produce the requested  
11 information. In addition, while Tatung argues that its alleged confidential documents are stored  
12 in a secure facility, Tatung fails to explain how it can assert the alleged confidentiality of such  
13 information that it has voluntarily disclosed to its customers, particularly where Tatung evidently  
14 has no confidentiality agreement in place to protect the information. In addition, Tatung fails to  
15 explain why the Protective Order entered in the Main Case, which governs the use and disclosure  
16 of confidential information, does not adequately protect the information to be produced by the  
17 third parties. Indeed, by Tatung’s own admission, it has already produced documents designated  
18 as “Highly Sensitive Confidential” in the Main Case under the Protective Order. Yet, Tatung’s  
19 arguments suggest that such a course of action is not good enough for the third parties, even  
20 though the Protective Order clearly applies to non-parties as well. Ex. 4. Tatung’s argument that  
21 LPL seeks such information “to obtain a competitive advantage over them” is unfounded,  
22 inappropriate, and frankly, would not even be possible since documents marked “Highly  
23 Sensitive Confidential” cannot even be disclosed to LPL and can only be seen by outside counsel.  
24 *See* Ex. 4 at ¶ 2.2. LPL strongly disputes Tatung’s contention that it has ever violated a  
25 Protective Order in this or any other cases. Moreover, Tatung has no evidence to support its  
26 contention that LPL may be in violation of the patent prosecution bar, and Tatung’s accusations  
27 on this point are misplaced and offensive

28



1 Here, Tatung has not identified any particular harm that would necessitate a Protective  
2 Order. Moreover, Tatung has no basis to object to the information sought by LPL's subpoenas  
3 and, thus, does not have standing to move for a Protective Order with respect to any of LPL's  
4 subpoenas. As such, Tatung has evidently filed these motions solely to delay and impede LPL's  
5 discovery efforts.

6 C. Tatung's Motion Is Nothing More Than An Attempt to Interfere With LPL's  
7 Legitimate Third Party Discovery

8 Tatung's interference with valid third party discovery is inappropriate and is nothing more  
9 than an attempt to delay the third party discovery until after the March 30, 2007 discovery  
10 deadline. Indeed, on March 7, 2007, LPL received a telephone message from Sensormatic, who  
11 had previously agreed to produce the documents requested in the Subpoena. In that message,  
12 Sensormatic stated that Tatung told Sensormatic that it planned to move for a protective order.  
13 Sensormatic further expressed concern about being in the middle of the dispute between the  
14 parties regarding the Subpoena. As a result, Sensormatic has not produced documents yet despite  
15 its earlier agreement to do so. On March 8, 2007, LPL received correspondence from Tyco  
16 Electronics Corp. ("Tyco"), who LPL had also served with a Subpoena. (See Ex. 3.) Prior to that  
17 date, Tyco had also agreed to produce documents in response to the Subpoena. In the  
18 correspondence on March 8, however, Tyco stated that, "I understand that [Tatung] intends to file  
19 a motion for protective order with regard to this subpoena. In light of this, Tyco will await the  
20 disposition of this motion by the court before providing any material in response to the  
21 subpoena." (Id.) These communications clearly show that Tatung's motions are delaying LPL's  
22 legitimate discovery in this action. Because Tatung waited until now to file motions pertaining to  
23 subpoenas served almost one month ago, it is also clear that Tatung is using its motions as a way  
24 to prevent LPL from obtaining third party discovery prior to the March 30 deadline.

25 Tatung's decision to wait almost one month to file its motions for protective order and  
26 Tatung's disruptive communications with third parties are tactics that Tatung has used before in  
27 the Main Case and in at least one prior patent infringement case. In the Main Case, during the  
28 jurisdictional discovery phase, "Tatung failed to appear for depositions on multiple occasions,

1 failed to produce witnesses prepared to testify on noticed and relevant topics, and failed to  
2 respond to interrogatories and requests for production of documents,” which forced LPL to waste  
3 its resources just to prove that Tatung’s products are sold in Delaware. (Ex. 5, Report &  
4 Recomms. at 9 (Aug. 16, 2005) (imposing sanctions on Tatung).) Ultimately, after the Special  
5 Discovery Master in the Main Case reviewed Tatung’s pattern of delay and discovery abuse,  
6 Tatung withdrew its jurisdictional defense. (*See generally id.*)

7 Tatung has also taken steps to disrupt third party discovery in at least one other case. *See*  
8 *Safer Display Technology, Ltd. v. Tatung Co.*, 227 F.R.D. 435 (E.D. Va. 2004) (copy attached  
9 hereto). In that case, represented by the same counsel as in the Main Case, Tatung engaged in  
10 similar delays before it finally withdrew its jurisdictional defense. *See Safer Display*, 227 F.R.D.  
11 at 437. Notably, in *Safer Display*, Tatung worked diligently to impede third party discovery by  
12 contacting and attempting to dissuade third parties from producing discovery, (*see* Ex. 6 at 9-10),  
13 and filing motions for protective orders for which Tatung lacked standing, (*see id.* at 10-11).

14 As Tatung is aware, all of these emergency hearings have been scheduled to occur  
15 simultaneously with depositions of Tatung’s witnesses. Because LPL’s lead trial counsel are  
16 busy taking and defending depositions this week, it appears that Tatung strategically filed these  
17 requests for expedited hearing in an attempt to prevent LPL from obtaining significant and  
18 relevant information it needs from the third parties or to divert LPL’s focus from the Tatung  
19 depositions. Tatung’s continuing pattern of dilatory tactics and improper interference with LPL’s  
20 discovery efforts should not be allowed to continue.

21 **D. LPL Has Been Unsuccessful In Obtaining the Discovery It Seeks From the**  
22 **Defendants, Who Have Refused to Produce the Requested Documents**

23 LPL needs the discovery that it seeks from the third parties because the fact discovery in  
24 the Main Case will close on March 30, 2007 and because Tatung has not cooperated with LPL’s  
25 discovery efforts. Indeed, Tatung misrepresents the volume and the sufficiency of its document  
26 production to date. Although LPL’s discovery requests were served on November 29, 2005,  
27 Tatung has refused to fully comply with those requests by, among other things, imposing  
28 unreasonable limitations and conditions on their production. LPL filed motions to compel in the

1 Main Case that addressed issues common to all Defendants in the Main Case in September,  
2 October, November, and December 2006 and in January, February, and March 2007. Most of  
3 these issues have not yet been resolved and many of those unresolved issues relate directly to  
4 Tatung's instant Motion for Protective Order. For instance, although Tatung has identified over  
5 300 potentially infringing products, it only produced about 60 technical drawings and then  
6 claimed, without explaining their calculations, that this fractional production covered as much as  
7 96% of their products. Additionally, after telling LPL for months that it had produced all  
8 technical documents, Tatung has only recently revealed, but not yet fully produced, additional  
9 categories of critically relevant technical drawings. Tatung has informed LPL that it will  
10 complete its supplemental production in April, which is well after the March 30 deadline for third  
11 party discovery.

12 Tatung argues that the third parties should not be required to produce documents, in part,  
13 because Tatung has objected to the scope of LPL's requests. Tatung correctly notes that the  
14 Special Discovery Master in the Main Case has not yet ruled on these issues. This is precisely the  
15 reason that LPL seeks discovery from the third parties. Tatung has refused to produce relevant  
16 documents and the Special Discovery Master has not ruled on Tatung's objections or on LPL's  
17 motions to compel that production. Notably, the subpoena itself is not limited to documents  
18 relating to Tatung in the possession of the third party as the subpoena also seeks documents  
19 relating to ViewSonic, another defendant in the Main case who has not objected to these  
20 subpoenas. All fact discovery, including third party discovery, in the Main Case closes on  
21 March 30, 2007. After that date, LPL will not be able to seek further discovery from any third  
22 party. Thus, in order to compile all relevant evidence and properly prepare its case for trial, LPL  
23 needs discovery from the third parties so that it can test the sufficiency and completeness of  
24 Tatung's own production.

25 There have been no rulings in the Main Case that would limit LPL's ability to obtain the  
26 scope of discovery that it seeks from the third parties. Indeed, contrary to Tatung's statement that  
27 the Special Discovery Master's "impending ruling" will be favorable to Tatung, neither party can  
28 predict in whose favor the Special Discovery Master will rule. Although Tatung resists LPL's

1 discovery in the Main Case, that resistance does not, by itself, erect roadblocks to LPL's  
2 discovery from third parties. LPL properly seeks discovery from Tatung about all potentially  
3 infringing products because only Tatung can provide LPL with information that would identify  
4 infringing products out of Tatung's total of over 850 different products.

5 E. The Scope of the Subpoena is Reasonable, And In Any Event, Tatung's  
6 Objections are Misplaced

7 In its Motion, Tatung argues that any discovery should be limited to the accused products  
8 This, however, is precisely why LPL issued the Subpoenas. In its Complaint, LPL identified to  
9 Tatung an example of a product that LPL alleged to infringe the Patents-in-Suit. However,  
10 because Tatung makes hundreds of products, most of which are sold under brand names  
11 belonging to third parties, LPL has no way to know, without Tatung's assistance, which of  
12 Tatung's hundreds of products use infringing technology. LPL's attempts to obtain information  
13 regarding Defendants' products has been ongoing since November 2005. However, the  
14 Defendants have objected to producing documents that would enable LPL to identify those  
15 products, and continue to resist LPL's efforts to this day. In fact, during a hearing on March 12,  
16 2007, Tatung conceded that it has not produced all such documents and that it would produce  
17 additional documents in April 2007, after the deadline for the close of third party discovery.

18 In light of the Delaware Court's Scheduling Order, requiring that third party discovery be  
19 completed by March 30, Tatung's efforts to limit the scope of LPL's subpoena to products that  
20 have been accused of infringement will artificially narrow the scope of the subpoena to products  
21 that are currently accused, even though that list will likely expand in April, after LPL finally  
22 receives Tatung's supplemental document production.

23 In addition, Tatung's objections to the scope of the Subpoena are misplaced. Specifically,  
24 objections based on burden or scope of a Subpoena should be made by the party upon whom the  
25 Subpoena is served. As the burden will not be borne by Tatung, Tatung does not have standing to  
26 raise that issue. To the extent that Tatung believes that the documents produced by third parties  
27 are not relevant to the litigation, or exceed the bounds of admissible evidence, Tatung can raise  
28 those arguments in advance of trial. *See Cook v. Rockwell Intern. Corp.*, 935 F Supp. 1452, 1465

1 (D. Colo. 1996) ("Defendants had no standing to object to the breadth of the order [with respect  
2 to third party subpoena] but were restricted to appropriate objections as to relevance and  
3 admissibility before trial.") Notably, Tatung filed the Motions for Protective Order without  
4 regard for the fact that several of the third parties had either already produced the requested  
5 documents or agreed to produce the requested documents with objection. As the party to whom  
6 the Subpoena was served has not filed a Motion for Protective Order with respect to the breadth  
7 of the Subpoena, Tatung's objection on that basis should be denied.

8 **III. CONCLUSION**

9 For the foregoing reasons, LPL requests that the Court exercise its discretion to transfer  
10 the instant motion to the United States District Court for the District of Delaware. In the  
11 alternative, LPL requests that the Court deny the Motion and allow LPL to proceed with  
12 necessary third-party discovery.

13 Dated: March 14, 2007

MCKENNA LONG & ALDRIDGE LLP

14  
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## EXHIBIT L



ALL STATE LEGAL EOE 201010 RECYCLED



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January 8, 2007

**BY E-MAIL & HAND DELIVERY**

The Honorable Vincent J. Poppiti  
BLANK ROME LLP  
Chase Manhattan Center  
1201 Market Street, Suite 800  
Wilmington, DE 19801

**Re:** *LG Philips LCD Co., Ltd. v. ViewSonic Corp., et al.*, C.A. No. 04-343-JJF

Dear Special Master Poppiti:

Defendants Tatung Company and Tatung Company of America, Inc. (collectively, the "Tatung Defendants") respectfully submit this letter brief in opposition to Plaintiff LG. Philips LCD Co., Ltd.'s ("LPL") Motion to Compel Discovery Regarding Indirect Infringement and Damages.

Significant portions of LPL's Motion are premature and moot. During the parties' December 2006 meet and confers, the Tatung Defendants already agreed to produce summary sales data, including quarterly or monthly quantity and average price for each identified product that is destined for North America.<sup>1</sup> The Tatung Defendants also agreed to supplement numerous interrogatories and document requests to include information pertaining to the two additional Tatung products recently accused by LPL.<sup>2</sup> (Declaration of Valerie W. Ho, ¶7.)

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<sup>1</sup> Because Tatung Company's sales occur in Asia and the products are shipped FOB from an Asian port, Tatung does not always know where its customers ultimately will sell the products they purchase from Tatung. Tatung in general knows that certain products are destined for North America, which includes the United States and Canada.

<sup>2</sup> Specifically, the Tatung Defendants agreed to supplement Interrogatories Nos. 1, 8, 9, 10, 11, 12 and Document Requests Nos. 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 25, 26, 31, 32, 33, 34, 35, 38, 41, 48, 51, 52, 55, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 73, 74, 75, 79, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98 and 99. (Ho Decl., ¶7).

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Because of the holidays and counsel's vacation plans, LPL was informed that the Tatung Defendants would provide supplementations in January 2007. The Tatung Defendants also assured LPL that it would receive the supplementations before any scheduled depositions of Tatung witnesses.

Apparently unsatisfied with the Tatung Defendants' reasonable attempts to resolve the parties' discovery disputes, LPL now seeks to compel a large universe of documents that pertain not only to the three accused products it has identified, but to the hundreds of products that are not accused and not at issue. For example, for each of the hundreds of Tatung products that have not been accused by LPL, LPL is demanding that Tatung produce "[a]ll orders, invoices, bills of sales, and bills of lading since December 1, 2002 . . . ." (See Request No. 10.) LPL also is seeking "[a]ll documents concerning transactions since January 1, 2002 between you [the Tatung Defendants] and any subsidiary, customer, distributor, reseller, and/or retailer in the U.S. regarding any types of visual display products . . . ." (See Request No. 58.) LPL's demand for every single piece of paper relating to every single Tatung product is extremely overbroad and burdensome, especially when most of these products have not been accused of infringement by LPL.

LPL claims that it needs this information in order to determine indirect infringement. However, LPL has not shown why such information is relevant to any claims or defenses in this case or is reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. Proc. 26(b); *see also* Adv. Comm. Notes regarding 2000 Amendment ("The rule change signals to the court that it has the authority to confine discovery to the claims and defenses asserted in the pleadings, and signals to the parties that they have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings."). It is well-established that determining whether a patent claim has been infringed involves a two step analysis. First, the claim must be properly construed by the Court to determine its scope and meaning. Second, the claim, as construed, must be compared to the accused device or process. *PC Connector Solutions LLC v Smartdisk Corp.*, 406 F.3d 1359, 1362 (Fed. Cir. 2005). Therefore, infringement analysis focuses on the products or processes and the claims of the patents. The Tatung Defendants already have produced and will produce technical documents that depict the components that make up its products as well as the assembly methods used. Therefore, LPL has the technical information needed to compare Tatung's products to the asserted claims.<sup>3</sup> Yet, it has thus far only accused three Tatung products out of hundreds.

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<sup>3</sup> During the parties' meet and confers, the Tatung Defendants repeatedly asked LPL what specific technical information it claims it still needs in order to develop its infringement allegations with respect to all of the identified products. LPL merely responded that it is entitled to every single Tatung document.

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Moreover, there can be no indirect infringement without direct infringement. "In order to succeed on a claim of inducement, the patentee must show, first that there has been direct infringement, . . . and second that the alleged infringer knowingly induced infringement and possessed specific intent to encourage another's infringement" *Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1304 (Fed. Cir. 2002). In other words, in order for there to be indirect infringement, there must be direct infringement and an infringing product. Here, there is no allegation of direct infringement with respect to the hundreds of products for which LPL seeks thousands of documents. Because these products have not been accused, Tatung cannot be liable for indirect infringement with respect to these products. Until LPL provides a definitive list of accused products, it is not entitled to the broad categories of documents it seeks in this Motion.

Accordingly, the Tatung Defendants respectfully request that the Court deny LPL's Motion to Compel in its entirety.

Respectfully,

  
Anne Shea Gaza  
(#4093)

ASG/afg

cc: Clerk of the Court (By Electronic Filing)  
Richard Kirk, Esquire (via electronic mail)  
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Lora Brzezynski, Esquire (via electronic mail)  
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